

SPECIAL MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

MONDAY, DECEMBER 13, 2010

The Council of the City of San José convened in special session at 1:31 p.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Constant, Herrera, Kalra, Liccardo, Nguyen, Oliverio, Pyle; Reed.

Absent: Council Members - Chu. (Excused)

1. Consideration of various issues related to the regulation of medical marijuana establishments in the City of San José.

Documents Filed: (1) Joint memorandum from Deputy City Manager Deanna J. Santana, Acting Police Chief Chris Moore, Director, Planning, Building and Code Enforcement Joseph Horwedel and Director of Finance Scott P. Johnson, dated December 8, 2010, outlining the purpose of the special meeting of December 13, 2010. (2) Supplemental memorandum from Deputy City Manager Deanna J. Santana, dated December 8, 2010 providing Council with information received from the public. (3) Memorandum from Council Member Oliverio, dated December 10, 2010 recommending support for a medical cannabis ordinance. (4) Memorandum from Council Member Chu, dated December 13, 2010, requesting an excused absence from the meeting of December 13, 2010. (5) June 7, 2010 Public Meeting summary.

2. Presentation of Medical Marijuana.

- (a) Legal Analysis**
- (b) Land Use Ordinance & Policy Options**
- (c) Regulatory Framework & Policy Options**
- (d) Taxes**
- (e) Fees**

Documents Filed: Supplemental memorandum from Deputy City Attorney Angelique Gaeta-Nedrow, dated June 18, 2010 outlining the Compassionate Use Act of 1996 (CUA).

2. Presentation of Medical Marijuana (Cont'd.)

Deputy City Manager Deanna J. Santana offered opening remarks on various components of the regulation of medical marijuana establishments requiring action.

City Attorney Richard Doyle provided opening remarks, and Deputy City Attorney Angelique Nedrow offered input on the Medical Marijuana Program Act, U.S. Attorney guidelines and a summarization of similar case law.

Frank Carrubba, Santa Clara County Narcotics Prosecution Team offered further legal perspective, including framework for draft resolutions.

Assistant Director of Planning and Code Enforcement Laurel Prevetti outlined zoning and land use ordinance guidelines. Police Lieutenant Dave Hober outlined policy alternatives.

Director of Finance Scott P. Johnson provided an overview of taxation issues, and Deputy City Manager Deanna J. Santana discussed a proposed staffing plan.

Public Comments: A presentation was given by *Americans for Safe Access* on the safe access of medical marijuana in the City of San José. The *Medical Cannabis Collective Coalition* offered a presentation outlining potential policy options.

The following speakers expressed concerns regarding proposed regulations and the benefits of medicinal marijuana: Robert Barraza, Ryan Fillhardt, Keith Freeman, Katrina Herrera, Daniel Hovland, Jonas Jansen, Gail Jimenez, Richard Kuu, Gabriela Lopez, Jesus J. Reyes Jr., Jenny Rutherford, Jorge Sandoval, Jim Staton, Pat Nupakuk, Jan Sweitzer, Tony Tran, Lauren Vazquez, D. Scott Wade, Emiliano Pardo, Randy Knudmueller, Corinna Reyes, Mark Shelton, Matt Lucero, Darlene Welch, Rick Squires, M. Moses, Jim Trevino, Aisha, Kim Cue, Richard Ceraolo, Seher Khan, Gary Salvadore, Tom Adler, Andy Schwaderer, Douglas Chloupek, Dave Hodges, Pat Knoop, Wanda Miller, David Harbold, Keith Ligons, John Vavalchik, Kim Wilczewski, Victoria Pena, Athena Altamirano, Chris Akins, Dana Hutchings, Woody DeMayo, Bernard Miller, Bryce Torres, Gabriel Greenstem, Tracey Anderson, Sandra Meza, Valerie Gonzales, Wade Atteberry, James Hart, Frances Schmidt, Adam Mintz, Daniella Sattler, Michelle Hovey, Reyna Burns, Pandy Arrieta, Phyllis Stevens, Tony Nguyen, Beverly Bachoo, Benito Ortega, Deborah Perez, Alicia Gonzales, Adam Smith, William Bell, David Rapan, Michael Gammino, Margaret Schultz, Lardean Weston, Thomas McConnell, Van Hovey, Carla Nespole, Eliasar Silva and Paul Paiz.

Julie Engelbrecht spoke in regard to neighborhood impacts.

2. Presentation of Medical Marijuana (cont'd.)

Action: The Staff presentation was accepted. (10-1. Absent: Chu.)

3. City Council Discussion and Possible Actions.

(a) Provide Input to Regulate & Tax Medical Marijuana Establishments.

Possible Action for Policy Option 1:

- (1) Direction to staff to continue to develop medical marijuana regulations that result in the adoption of ordinances providing:**
 - (a) Operating Regulations;**
 - (b) Land Use Restrictions;**
 - (c) Budget action that results in a 100% cost recovery program;**
 - (d) Authorization of the addition of staff to support this new regulatory program; and,**
 - (e) Establishment of fines for various violations related to these regulations.**
- (2) Adoption of an ordinance amending Section 4.66.250 of Chapter 4.66 of Title 4 of the San José Municipal Code to set the rate of the Marijuana Business Tax at 5% of gross receipts for all marijuana businesses.**

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated December 7, 2010, providing a legal update on medical marijuana issues. (2) Supplemental memorandum from City Attorney Richard Doyle, dated December 10, 2010, modifying recommendations to the City Council. (3) “Discussion of Policy Option 1, Regulation & Taxation and Related Policy Alternatives”, dated December 13, 2010. (4) Draft Ordinance, Chapter 6.88 of the San José Municipal Code. (5) Draft Resolution, Chapter 20.100 of Title 20 of the San José Municipal Code. (6) Draft Urgency Ordinance, Title 1 of the San José Municipal Code. (7) Draft Resolution amending the administrative citation schedule of fines for violations of the San José Municipal Code. (8) Draft Ordinance amending Section 4.66.250 of Chapter 4.66 of Title 4 of the San José Municipal Code. (9) Report to Council – City of Sacramento, provided to the Mayor and Members of the City Council, dated November 9, 2010.

Motion: Council Member Oliverio moved approval of Item #2 from his memorandum of December 10, 2010, to “Implement Measure U (78.3% approval) including the following: all collectives provide financial audits to the City, acknowledge the exchange of currency so that gross receipts can be taxed and taxation for medical cannabis will be set at 7%”. The motion was seconded by Council Member Nguyen.

Council Member Constant declined support of the motion due to the potential for conflict between federal law and state law and conflict between state law and local ordinances. Council Member Herrera expressed agreement with Council Member Constant and stressed a need to first address legislative issues.

3. City Council Discussion and Possible Actions.

(a) Provide Input to Regulate & Tax Medical Marijuana Establishments (Cont.'d.)

Action: On a call for the question, the motion carried, and [Ordinance No. 28867](#), entitled: "An Ordinance of the City of San José Amending Section 4.66.250 of Chapter 4.66 of Title 4 of the San José Municipal Code to Set the Rate of Taxation for Marijuana Businesses", was adopted with direction to Staff to implement Measure U (78.3% approval) including the following: All collectives provide financial audits to the City, acknowledge the exchange of currency so that gross receipts can be taxed and the Marijuana Business Tax will be set at 7%. (8-2-1. Noes: Constant, Herrera. Absent: Chu.)

Vice Mayor Chirco and Council Member Pyle left the meeting at 5 p.m.

(c) Establish a Workplan and Meeting Schedule.

Possible Action for Policy Option 3:

- (1) Direct staff to return to the Rules & Open Government Committee with a work plan and meeting schedule to complete review of the medical marijuana regulatory policy options and appropriately direct staff.**

CEQA: Not a Project, File No. PP10-068(c), Municipal Code or Policy.

Motion: Council Member Constant moved approval of a referral to the Rules and Open Government Committee for review of a work plan with subsequent follow-up to the Public Safety, Finance and Strategic Support Committee. The motion was seconded by Council Member Nguyen.

Substitute Motion: Council Member Oliverio moved approval of Item #1 of his memorandum of December 10, 2010, to assemble a separate committee, which would include at least three collective operators, law enforcement, the City Manager's Office and City Attorney's Office with the committee providing Council with the framework for the final ordinance. Council Member Kalra seconded the motion.

Opposition was expressed by Mayor Reed, citing the efficiency of using existing processes and committees. Council Member Constant expressed agreement with Mayor Reed's concerns.

On a call for the question, the substitute motion failed. (3-5-3. Noes: Constant, Herrera, Liccardo, Nguyen, Reed. Absent: Chirco, Chu, Pyle.)

Action: On a call for the question, the original motion carried unanimously, with approval of direction to Staff to complete a work plan and meeting schedule, complete review of the medical marijuana regulatory policy options and return to the Rules and Open Government Committee with subsequent referral to the Public Safety, Finance and Strategic Support Committee. (8-0-3. Absent: Chirco, Chu, Pyle.)

3. **City Council Discussion and Possible Actions (Cont'd.)**

(b) **Ban Medical Marijuana Establishments.**

Possible Action for Policy Option 2:

- (1) **Adoption of an urgency ordinance amending the Section 20.10.040 of Chapter 20.10 and adding a new Part 9.5 to Chapter 20.80 of Title 20 of the San José Municipal Code to clarify that businesses involving the cultivation, dispensation, distribution, transportation or sale of marijuana in the City for any purpose are prohibited and setting forth the facts constituting such urgency.**
- (2) **Adoption of a resolution initiating proceedings to amend Section 20.10.040 of Chapter 20.10 and adding a new Part 9.5 to Chapter 20.80 of Title 20 of the San José Municipal Code to clarify that businesses involving the cultivation, dispensation, distribution, transportation or sale of marijuana in the City for any purpose are prohibited, setting a public hearing for the ordinance and referring said ordinance to the Planning Commission for its review and recommendation.**

CEQA: Not a Project, File No. PP10-068(c), Municipal Code amendments involving no physical changes to the environment.

Motion: Council Member Herrera moved approval of the Staff recommendation. Council Member Constant seconded the motion.

Legal clarification was offered by City Attorney Richard Doyle, and Council discussion followed. Assistant Director of Planning and Code Enforcement Laurel Prevetti offered code enforcement perspective.

Action: On a call for the question the motion failed. (3-5-3. Noes: Campos, Kalra, Liccardo, Nguyen, Oliverio. Absent: Chirco, Chu, Pyle.)

Council discussion continued.

Motion: Council Member Liccardo moved the recommendation as outlined below in 'Action'. Council Member Campos seconded the motion.

Action: On a call for the question, the motion carried unanimously, with no ban approved; instead, direction given that no business licenses will be issued to new medical marijuana establishments and continue enforcement priorities as directed by Council on June 22, 2010. (8-0-3. Absent: Chirco, Chu; Pyle.)

ADJOURNMENT

The Council of the City of San José was adjourned at 5:20 p.m.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

rmk/12-13-10.MIN

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